

(2010) 11 PAT CK 0101

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5023 of 1997

Kedar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (2011) 59 BLJR 2135

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the Petitioners and the counsel for the Sasaram-Bhabhua Central Cooperative Bank Limited(hereinafter referred to as the Bank), who states that he does not have any copy of the brief and the matter be adjourned so as to enable him to reconstruct the brief. I regret not to accept such submission, in view of the fact that instant writ case was filed on 23.5.1997, the then Managing Director of the Bank entered appearance in the writ case through counsel by filing Vakalatnama dated 24.3.1998 in the registry on 21.4.1998. Learned Counsel for the Bank who is making request for adjournment to reconstruct the record accepted the Vakalatnama along with two other counsel on 24.3.1998. The present writ petition under orders dated 16.3.1998 was directed to be heard along with C.W.J.C. No. 1615 of 1997. Having noticed the aforesaid fact under orders dated 9.11.2010, this Court directed the present writ petition to be put up along with the records of C.W.J.C. No. 1615 of 1997. On 16.11.2010 both the writ petitions were called for hearing but none appeared for the Bank. This Court having noticed the aforesaid fact as also the fact that the same was the position even on earlier occasion passed over the matter observing that if none appears for the Bank on the next appointed date, the matter shall proceed. Today learned Counsel Sri Rajesh Prasad Choudhary has appeared on instruction from the Chairman of the Bank and

states that he be allowed time to reconstruct the records. In view of the pendency of the matter for over 10 years and the fact that learned Counsel Sri Choudhary accepted Vakalatnama on 24.3.1998 and entered appearance in the matter way back on 21.4.1998, I am not inclined to grant any further accommodation to the Bank to reconstruct the records.

2. Petitioners in the two writ application(s), at the relevant time served as employees of the Bank. They are aggrieved by the order of the Administrator of the Bank bearing Memo No. 233 dated 14.9.1988, Annexure-1 in both the writ petitions, whereunder their services have been terminated on the ground that before their appointment approval of the Registrar, Cooperative Societies was not obtained. The impugned termination order dated 14.9.1988 was passed without observing the formalities of natural justice as also without serving any notice on the Petitioners asking them to show cause as to why their appointment be not cancelled. Further ground taken in support of the writ petition is that Respondent Nos. 8 to 36 in C.W.J.C. No. 5023 of 1997 and Respondent Nos. 8 to 38 in C.W.J.C. No. 1615 of 1997, although appointed in the service of the Bank without the approval of the Registrar, Cooperative Societies have been continued in the service of the Bank and thereby Petitioners have been discriminated infracting Articles 14, 16 of the Constitution of India.

3. This Court in batch of writ petitions set aside similar order passed by the Administrator of the Bank which is contained in Annexures-3 to 6 in the two writ applications. Under orders dated 18.7.1995, Annexure-7 in the two writ petitions, the matter was referred to the Registrar, Cooperative Societies so as to examine the submission of the Petitioners that termination of their employment by the Bank without notice and retaining others similarly situate employee without the approval of the Registrar, Cooperative Societies is violative of Articles 14 and 16 of the Constitution of India. The Registrar, however, under order dated 2.12.1996 passed in Misc. Case No. 174 of 1995, Annexure-2 affirmed the termination order holding that at the time of appointment of the Petitioners in the service of the Bank, the Bank was not a State within the meaning of Article 12 of the Constitution of India. Aforesaid view of the Registrar that the Bank, at the relevant time was not State within the meaning of Article 12 of the Constitution does not appear to be correct in view of the fact that termination order has been passed by the Administrator who is nonelse but an officer of the State. The Administrator is appointed when the Managing Committee is superseded. Even otherwise the Sasaram-Bhabhua Central Cooperative Bank Ltd., Sasaram is a State within the meaning of Article 12 of the Constitution, as it is a Bank constituted in terms of the provisions of the Bihar Cooperative Societies Act, 1935 and the State Government has deep and pervasive control over the affairs of the Bank. During the pendency of these two writ petitions the services of the private Respondents of the two writ petitions was terminated. The termination order was impugned in C.W.J.C. No. 5540 of 2006 which was allowed under order dated 24.4.2007. Perusal of order dated 24.4.2007 would indicate that the order passed by the Registrar dated 2.12.1996, Annexure-2 affirming the order of

termination of the Petitioners dated 14.9.1988 has also been set aside.

4. It is further submitted on behalf of the Petitioners that as the Petitioners are the employees of the Bank, they have the protection of Articles 14, 16 of the constitution of the India and before terminating their services under orders dated 14.9.1988, Annexure-1 they were required to have been heard, as from the order itself it will appear that they had served the Bank for more than a year before termination of their services. It is also submitted that the ground taken in the termination order that appointment of the Petitioners was made without the approval of the Registrar, Cooperative Societies is wholly non-est as in terms of the bye-laws of the Bank, the Board of Directors of the Bank is competent to make appointment even without the approval of the Registrar, Cooperative Societies. Private Respondent(s) appointed without the approval of the Registrar, Cooperative Societies have continued in the service of the Bank in compliance of the order dated 24.4.2007.

5. Having heard counsel for the parties and having appreciated the fact that the order dated 2.12.1996 passed in Misc. Case No. 174 of 1995, Annexure-2 has already been set aside by another Bench of this Court under orders dated 24.4.2007 in C.W.J.C. No. 5540 of 2006 together with termination order of the similarly situate Petitioners of the said writ case, the present termination order dated 14.9.1988 and the order dated 2.12.1996, Annexures-1 and 2 are quashed on the same grounds with direction to the Bank to reinstate the 13 Petitioners on the same terms and conditions on which other 41 persons named under order dated 14.9.1988, Annexure-1 have been reinstated.

6. The two writ application(s) are, accordingly, allowed.